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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLE COMPUTER INC., DERIVATIVE
LITIGATION

Case Number C 06-4128 JF

ORDER¹ DENYING MOTION FOR
APPOINTMENT OF SARATOGA
PLAINTIFFS AS LEAD PLAINTIFF
AND FOR APPOINTMENT OF
FINKELSTEIN & KRINSK LLP TO
THE MANAGEMENT COMMITTEE

[re: docket no. 84]

Plaintiffs Saratoga Advantage Trust Large Capitalization Growth Portfolio and Saratoga Advantage Trust Technology & Communications Portfolio (collectively "Saratoga Plaintiffs") move for appointment of themselves as lead plaintiff and for appointment of their counsel Finkelstein & Krinsk LLP to the management committee. Nominal defendant Apple Computer Inc. takes no position on the motion.² The management committee opposes the motion. The

¹ This disposition is not designated for publication and may not be cited.

² Plaintiff New York City Employees' Retirement System filed a response stating no opposition to the instant motion to the extent that it would not prejudice its application for lead plaintiff status in the related case *Vogel v. Jobs*, No. C 06-05208, brought under the Private Securities Litigation Reform Act. The Court granted that motion at oral argument on January 19,

1 Court heard oral argument on the motion on January 19, 2007.

2 On November 2, 2006, the Court issued an order establishing a management committee
3 for this litigation and declining to appoint a lead plaintiff. Prior to issuing that order, the Court
4 considered the arguments raised by the Saratoga Plaintiffs in the affidavit filed on October 19,
5 2006, and at the oral argument on October 20, 2006. While aware of the reputation and expertise
6 of Finkelstein & Kinsk LLP, the Court decided that the litigation would proceed most effectively
7 with a management committee composed of Cotchett, Pitre, Simon & McCarthy; Keller
8 Rohrback L.L.P.; Lerach Coughlin Stoia Geller Rudman & Robbins LLP; and Schifffrin &
9 Barroway, LLP, with the first firm serving as chair.

10 The Saratoga Plaintiffs now move for appointment of their counsel to the management
11 committee to avoid a potential deadlock among the four-member committee and to protect
12 claims under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j, and Rule 10b-5, promulgated
13 thereunder, 17 C.F.R. § 240.10b-5. The Court concludes that it should not alter the management
14 structure for either of these reasons. The management committee reports that it has suffered no
15 deadlocks in producing the Consolidated Shareholder Derivative Complaint, filed on December
16 18, 2006. The establishment of a four-member, rather than a five-member, management
17 committee was not an oversight but rather was intended to promote consensus-building among
18 the committee members. The Court remains confident that the management committee will
19 prosecute the litigation efficiently and effectively. The Court also concludes that the
20 management committee has adequate experience to protect any claims for relief under Section
21 10(b) or Rule 10b-5. Accordingly, the Court will deny the Saratoga Plaintiffs' motion for
22 appointment of its counsel, Finkelstein & Krinsk LLP to the management committee.

23 The Court also concludes that it need not appoint a lead plaintiff in this action. The Court
24 recognizes the Saratoga Plaintiffs' vigorous interest in this litigation, but concludes that the
25 management committee will represent the interests of Apple adequately without the appointment
26 of a lead plaintiff. Accordingly, the Court will deny the motion to appoint the Saratoga Plaintiffs

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as lead plaintiff.³

IT IS SO ORDERED.

DATED: January 22, 2007.


JEREMY FOGEL
United States District Judge

³ The Saratoga Plaintiffs argue that they should be included among the named plaintiffs in this action. The management committee stated at oral argument that it would give that suggestion serious consideration. The Saratoga Plaintiffs reserved the right to bring an appropriate motion on that subject. Accordingly, the Court need not address this issue at the present time.

1 This Order has been served upon the following persons:

2	Genevieve A. Cox	Genevieve.Cox@mto.com, sophialeshin@gmail.com
3	Travis E. Downs , III	travisd@lerachlaw.com, e_file_sd@lerachlaw.com
4	Yohance Claude Edwards	yohance.edwards@mto.com, milvi.giesinger@mto.com
5	Juli E. Farris	jfarris@kellerrohrback.com, mbates@kellerrohrback.com; bleland@kellerrohrback.com
6	Howard D. Finkelstein	fk@classactionlaw.com,
7	David Malcolm Furbush	dfurbush@omm.com, dbrown@omm.com; dshah@omm.com; lnewell@omm.com
8		
9	Sean M. Handler , Esq	ecf_filings@sbtclaw.com, der_filings@sbtclaw.com.com
10	Sarina M. Hinson	shinson@lawgarcia.com, jmobley@lawgarcia.com
11	Willem F. Jonckheer	wjonckheer@schubert-reed.com
12	Jeffrey R. Krinsk	jrk@classactionlaw.com, fk@classactionlaw.com
13	Elizabeth A. Leland	bleland@kellerrohrback.com, chopkins@kellerrohrback.com
14	Ronald Lovitt	rl@lh-sf.com, davies@lh-sf.com
15	Mark C. Molumphy	mmolumphy@cpsmlaw.com, jacosta@cpsmlaw.com, ksommerfeld@cpsmlaw.com
16		
17	Jerry E. Nastari	jen@coreylaw.com, deg@coreylaw.com
18	Alan R. Plutzik	aplutzik@bramsonplutzik.com
19	Juden Justice Reed	jreed@schubert-reed.com, rschubert@schubert-reed.com
20	Jerome C. Roth	Jerome.Roth@mto.com, susan.ahmadi@mto.com
21	Lynn Lincoln Sarko	lsarko@kellerrohrback.com
22	Kathryn A. Schofield	kschofield@bramsonplutzik.com, mfogle@bramsonplutzik.com
23	Robert C. Schubert	rschubert@schubert-reed.com
24	Luann Loraine Simmons	lsimmons@omm.com, smeblin@omm.com; cholsome@omm.com; cchiu@omm.com
25	Kelly L Sommerfeld	ksommerfeld@cpsmlaw.com, jacosta@cpsmlaw.com
26	John W. Spiegel	spiegeljw@mto.com, finchac@mto.com; stonelc@mto.com; berryjm@mto.com; giesingermj@mto.com; voigtsam@mto.com
27		
28	Mary Sikra Thomas	mthomas@gelaw.com, memaryt@verizon.net

Shawn A. Williams shawnw@lerachlaw.com, e_file_sd@lerachlaw.com;
e_file_sf@lerachlaw.com; AelishB@lerachlaw.com;
MoniqueW@lerachlaw.com; TravisD@lerachlaw.com;
ChrisW@lerachlaw.com

Scott Justin Yundt syundt@mandhllp.com, dhoward@mandhllp.com;
aarnall@mandhllp.com; gmurray@mandhllp.com

Eric L. Zagar ezagar@sbclasslaw.com, rwinchester@sbclasslaw.com;
der_filings@sbclasslaw.com

Notice will be delivered by other means to:

Carl Holliday Moor
Munger Tolles & Olson LLP
355 S Grand Ave 35FL
Los Angeles, CA 90071-1560

Richard S. Schiffrin
Schiffrin & Barroway LLP
280 King of Prussia
Radnor, PA 19087

Emanuel Shachmurove
Schiffrin & Barroway, LLP
280 King of Prussia Road
Radnor, PA 19087